

1 THE HONORABLE JOHN C. COUGHENOUR

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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 JIE JIAO,

10 Plaintiff,

11 v.

12 CONNIE BLUMENTHAL, *et al.*,

13 Defendants.
14

CASE NO. C17-1355-JCC

STIPULATED PROTECTIVE
ORDER

15 Pursuant to the parties' stipulated motion for a protective order (Dkt. No. 15), the Court
16 ORDERS as follows:

17 1. PURPOSES AND LIMITATIONS

18 Discovery in this action is likely to involve production of confidential, proprietary, or
19 private information for which special protection may be warranted. Accordingly, the parties
20 hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The
21 parties acknowledge that this agreement is consistent with Local Civil Rule 26(c). It does not
22 confer blanket protection on all disclosures or responses to discovery, the protection it affords
23 from public disclosure and use extends only to the limited information or items that are entitled
24 to confidential treatment under the applicable legal principles, and it does not presumptively
25 entitle parties to file confidential information under seal.

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2. “CONFIDENTIAL” MATERIAL

“Confidential” material shall include the following documents and tangible things produced or otherwise exchanged:

- Plaintiff’s confidential material includes all bank records, employment records, and all personal financial information of plaintiff or any one or more of her immediate family members.
- Defendant Blumenthal’s confidential material includes all bank records; personal financial data; personal and private information of third parties; business records and private transactions of other customers; and confidential documents of Realogics Brokerage, LLC.
- Defendant Realogics Brokerage, LLC d/b/a Realogics Sotheby’s International Realty’s confidential material includes trade secrets, commercial operations, proprietary business records, confidential financial records, tax returns, all transactions involving the personal and private information of third parties and customers, employment records, bank records, identification of customers, financial documents of third parties and customers; communications with other customers in unrelated transactions, including text message and email correspondence.

3. SCOPE

The protections conferred by this agreement cover not only confidential material (as defined above), but also (1) any information copied or extracted from confidential material; (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony, conversations, or presentations by parties or their counsel that might reveal confidential material.

However, the protections conferred by this agreement do not cover information that is in the public domain or becomes part of the public domain through trial or otherwise.

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1 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

2 4.1 Basic Principles. A receiving party may use confidential material that is disclosed
3 or produced by another party or by a non-party in connection with this case only for prosecuting,
4 defending, or attempting to settle this litigation. Confidential material may be disclosed only to
5 the categories of persons and under the conditions described in this agreement. Confidential
6 material must be stored and maintained by a receiving party at a location and in a secure manner
7 that ensures that access is limited to the person authorized under this agreement.

8 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise
9 ordered by the Court or permitted in writing by the designating party, a receiving party may
10 disclose any confidential material only to:

11 (a) the receiving party’s counsel of record in this action, as well as employees of
12 counsel to whom it is reasonably necessary to disclose the information for this litigation;

13 (b) the officers, directors, and employees (including in-house counsel) of the
14 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
15 agree that a particular document or material produced is for Attorney’s Eyes Only and is so
16 designated;

17 (c) experts and consultants to whom disclosure is reasonably necessary for this
18 litigation and who have signed the “Acknowledgement and Agreement to Be Bound” (Exhibit
19 A);

20 (d) the Court, court personnel, and court reporters and their staff;

21 (e) copy or imaging services retained by counsel to assist in the duplication of
22 confidential material, provided that counsel for the party retaining the copy or imaging service
23 instructs the service not to disclose any confidential material to third parties and to immediately
24 return all originals and copies of any confidential material;

25 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
26 necessary and who have signed the “Acknowledgement and Agreement to Be Bound” (Exhibit

1 A), unless otherwise agreed by the designating party or ordered by the Court. Pages of
2 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
3 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
4 under this agreement;

5 (g) the author or recipient of a document containing the information or a custodian or
6 other person who otherwise possessed or knew the information.

7 4.3 Filing Confidential Material. Before filing confidential material or discussing or
8 referencing such material in court filings, the filing party shall confer with the designating party
9 to determine whether the designating party will remove the confidential designation, whether the
10 document can be redacted, or whether a motion to seal or stipulation and proposed order is
11 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the
12 standards that will be applied when a party seeks permission from the Court to file material
13 under seal.

14 5. DESIGNATING PROTECTED MATERIAL

15 5.1 Exercise Restraint and Care in Designating Material for Protection. Each party or
16 non-party that designates information or items for protection under this agreement must take care
17 to limit any such designation to specific material that qualifies under the appropriate standards.
18 The designating party must designate for protection only those parts of material, documents,
19 items, or oral or written communications that qualify, so that other portions of the material,
20 documents, items, or communications for which protection is not warranted are not swept
21 unjustifiably within the ambit of this agreement.

22 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
23 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to
24 unnecessarily encumber or delay the case development process or to impose unnecessary
25 expenses and burdens on other parties) expose the designating party to sanctions.

1 If it comes to a designating party's attention that information or items that it designated
2 for protection do not qualify for protection, the designating party must promptly notify all other
3 parties that it is withdrawing the mistaken designation.

4 5.2 Manner and Timing of Designation. Except as otherwise provided in this
5 agreement (*see, e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or
6 ordered, disclosure or discovery material that qualifies for protection under this agreement must
7 be clearly so designated before when the material is disclosed or produced.

8 (a) Information in documentary form: (*e.g.*, paper or electronic documents and
9 deposition exhibits, but excluding transcripts or depositions or other pretrial or trial proceedings),
10 the designating party must affix the word "CONFIDENTIAL" to each page that contains
11 confidential material. If only a portion or portions of the material on a page qualifies for
12 protection, the producing party also must clearly identify the protected portions(s) (*e.g.*, by
13 making appropriate markings in the margins).

14 (b) Testimony given in deposition or in other pretrial proceedings: the parties and any
15 participating non-parties must identify on the record, during the deposition or other pretrial
16 proceeding, all protected testimony, without prejudice to their right to so designate other
17 testimony after reviewing the transcript. Any party or non-party may, within fifteen days after
18 receiving the transcript of the deposition or other pretrial proceeding, designate portions of the
19 transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect
20 confidential information at trial, the issue should be addressed during the pre-trial conference.

21 (c) Other tangible items: the producing party must affix in a prominent place on the
22 exterior of the container or containers in which the information or item is stored the word
23 "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection,
24 the producing party, to the extent practicable, shall identify the protected portion(s).

25 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
26 designate qualified information or items does not, standing alone, waive the designating party's

1 right to secure protection under this agreement for such material. Upon timely correction of a
2 designation, the receiving party must make reasonable efforts to ensure that the material is
3 treated in accordance with the provisions of this agreement.

4 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

5 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
6 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
7 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
8 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
9 challenge a confidentiality designation by electing not to mount a challenge promptly after the
10 original designation is disclosed.

11 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
12 regarding confidential designations without Court involvement. Any motion regarding
13 confidential designations or for a protective order must include a certification, in the motion or in
14 a declaration or affidavit, that the movant has engaged in a good faith meet and confer
15 conference with other affected parties in an effort to resolve the dispute without Court action.
16 The certification must list the date, manner, and participants to the conference. A good faith
17 effort to confer requires a face-to-face meeting or a telephone conference.

18 6.3 Judicial Intervention. If the parties cannot resolve a challenge without Court
19 intervention, the designating party may file and serve a motion to retain confidentiality under
20 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
21 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
22 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burden on
23 other parties) may expose the challenging party to sanctions. All parties shall continue to
24 maintain the material in question as confidential until the Court rules on the challenge.

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1 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
2 LITIGATION

3 If a party is served with a subpoena or a court order issued in other litigation that compels
4 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that
5 party must:

6 (a) promptly notify the designating party in writing and include a copy of the
7 subpoena or court order;

8 (b) promptly notify in writing the party who caused the subpoena or order to issue in
9 the other litigation that some or all of the material covered by the subpoena or order is subject to
10 this agreement. Such notification shall include a copy of this agreement; and

11 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
12 designating party whose confidential material may be affected.

13 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

14 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
15 material to any person or in any circumstance not authorized under this agreement, the receiving
16 party must immediately (a) notify in writing the designating party of the unauthorized
17 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,
18 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of
19 this agreement, and (d) request that such person or persons execute the “Acknowledgement and
20 Agreement to Be Bound” that is attached hereto as Exhibit A.

21 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
22 MATERIAL

23 When a producing party gives notice to receiving parties that certain inadvertently
24 produced material is subject to a claim of privilege or other protection, the obligations of the
25 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
26 provision is not intended to modify whatever procedure may be established in an e-discovery

order or agreement that provides for production without prior privilege review. The parties agree to the entry of a non-waiver order under Federal Rule of Evidence 502(d) as set forth herein.

10. NON TERMINATION AND RETURN OF DOCUMENTS

Within 60 days after the termination of this action, including all appeals, each receiving party must return all confidential material to the producing party, including all copies, extracts and summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

Notwithstanding this provision, counsel are entitled to retain one archival copy of all documents filed with the Court, trial, deposition, and hearing transcripts, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain confidential material.

The confidentiality obligations imposed by this agreement shall remain in effect until a designating party agrees otherwise in writing or a court orders otherwise.

IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any documents in this proceeding shall not, for the purposes of this proceeding or any other proceeding in any other court, constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by the law.

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1 IT IS STIPULATED, THROUGH COUNSEL OF RECORD.

2 LEVY | VON BECK | COMSTOCK | P.S.

3 DATED: November 15, 2017

4 /s Dave von Beck

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14 DATED: November 15, 2017

15 /s Rachel B. Greenlee

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24 PURSUANT TO STIPULATION, IT IS SO ORDERED

25 DATED this 17th of November 2017.

26 

John C. Coughenour
UNITED STATES DISTRICT JUDGE

1 EXHIBIT A

2 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of
4 _____ [print or type full address], declare under
5 penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order
6 that was issued by the United State District Court of the Western District of Washington on
7 _____ [date] in the case of *Jiao v. Blumenthal, et al.*, United States District Court Case
8 No. 2:17-cv-01355-JCC. I agree to comply with and to be bound by all the terms of this
9 Stipulated Protective Order and I understand and acknowledge that failure to so comply could
10 expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will
11 not disclose in any matter any information or item that is subject to this Stipulated Protective
12 Order to any person or entity except in strict compliance with the provisions of this Order.

13 I further agree to submit to the jurisdiction of the United States District Court for the
14 Western District of Washington for the purpose of enforcing the terms of this Stipulated
15 Protective Order, even if such enforcement proceedings occur after termination of this action.

16 Date: _____

17 City and State where sworn and signed: _____

18 Printed name: _____

19 Signature: _____